IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/09/2004

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THE HONOURABLE MR JUSTICE V.KANAGARAJ

Writ Petition No.18700 of 1998

Salem District Central Co.op.Bank
Cherry Road,
Salem .. Petitioner

-vs-

1. The Secretary to Government
Co-operation Food and Consumer
Protection Department,
Secretariat,
Chennai-9

2. The Additional Registrar
O/o Registrar of Co-operative Societies,
Kilpauk,
Chennai-10

3. S.Vijayan
.. Respondents

Petition under Article 226 of the Constitution of India praying
for the issue of a writ of certiorari as stated therein.

For petitioner: : Mr.M.R.Raghavan

For respondents: : Ms.V.Velumani,
AGP-R1 & R2.
Mr.R. Singaravelan-R3.

:O R D E R

The petitioner seeks the issuance of a writ of certiorari, to
call for the records relating to the order passed by the first respondent in
G.O(2D)NO.61,Co-operation, Food and Consumer Protection Department dated
8.9.1998 and to quash the same.

2. In the affidavit filed in support of the petition, the petitioner

would submit that the third respondent was the accountant and it was found that he accepted bribe of Rs.700/- and another sum of Rs.650/-; that he also recommended the disbursement of loan without verifying the loan bond; that a departmental enquiry was conducted and on being found guilty, a punishment of stoppage of increment for two years without cumulative effect was inflicted on him; that aggrieved by the said order, the third respondent filed a revision before the second respondent which was dismissed; that thereafter, he filed another revision before the first respondent Government which was also dismissed; that thereafter, he again filed another revision before the first respondent and the first respondent opined that it would not review the order passed by it earlier; that, however , in exercise of suo motu power, the first respondent has set aside the order of second respondent and hence the management has filed the above writ petition seeking the relief extracted supra.

3. The respondents have not filed any counter.

4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader, appearing for the respondent Nos.1 and 2 and the learned counsel appearing for the third respondent.

5. During arguments, the learned counsel appearing for the petitioner would submit that the third respondent was functioning as Accountant in the petitioner bank; that when the third respondent was functioning as a Senior Supervisor he committed serious irregularities; that considering the seriousness of the irregularities committed by the third respondent, the petitioner placed him under suspension pending enquiry on 11.9.1984; that the following charges were framed against the third respondent.
a) That he received Rs.700/-through the Secretary of the Siruvachiyur Agricultural Co. op. SOciety;
b) that he received Rs.650/- as bribe through the Secretary of the said Society out of the disbursement of the Medium term loan;
c) that he was responsible for gross dereliction of duty;
d) that he did not verify the cash book after 9.4.1984;
e) that he did not verify the crop loan issued after 13.2.1984; and
f) that he recommended the disbursement of loan to the members without verifying the loan bond in his capacity as bank Inspector especially when the loan bond did not contain the signatures of the sureties;
6. The third respondent was called upon to offer his explanation and he submitted his explanation on 28.12.1994; that since the explanation of the third respondent was not satisfactory, an enquiry was ordered on 31.1.1985 and the said enquiry was conducted on 14.3.1985, 24,4.1985, 9.5.1985 and 6.6.1985; that on the basis of the materials made available on record, the enquiry officer submitted his report on 5.7.1985 and the enquiry officer held that the charges levelled against the third respondent were proved; that accepting the findings of the Enquiry Officer, the third respondent herein was called upon to show cause as to why his services should not be dispensed with, since the charges framed as per the charge memo were proved in the domestic enquiry; that the petitioner herein imposed the penalty of stoppage of increment for a period of two years without cumulative effect as per its order dated

18.4.1986.

7. The further case of the petitioner is that aggrieved by the said order, the third respondent filed a Revision Application under Section 153 of the Tamil Nadu Co-operative Societies Act 1983 and the said revision application was dismissed on 6.7.1990;that against that order, the petitioner herein approached the first respondent by way of revision and the said revision was not entertained by the Government on ground that the third respondent had approached the Government belatedly; when such was the position,the third respondent had filed a Review Application before the first respondent on 18.2.1997 sought for review of the orders passed by the first respondent; that in exercise of suo motu power vested with the first respondent, the first respondent revised the orders passed by the second respondent and set aside the same as well as the punishment of stoppage of increment imposed on 18.4.1986 by the petitioner management;that aggrieved by this order, the Management has filed this writ petition on grounds such as the first respondent has exceeded its jurisdiction by invoking the alleged suo motu powers when it has dismissed an application filed by the third respondent earlier; that the impugned order passed by the first respondent is the result of gross misuse of power purportedly vested with it.

8.The learned counsel appearing on behalf of the petitioner would submit that the first respondent ought not to have interfered with the orders passed by the petitioner bank especially when serious irregularities have been committed by the petitioner while passing the order dated 18.4.1986; that the first respondent ought to have seen that further revision before it is not maintainable as against the orders passed by the second respondent in matters of disciplinary proceedings initiated by institutions as against the employees; that the interference made by the first respondent is unsustainable as the first respondent has not referred any tangible material in support of his finding; that the charges levelled against the third respondent have been proved in accordance with law and that the officers of Cooperative Societies do not have powers to adjudicate upon the decisions taken by the Co-operative institutions in respect of disciplinary proceedings and therefore the first respondent has usurped the powers and has misused the same.

9. Per contra, the learned counsel appearing for the third respondent would submit that the irregularity is committed only by the petitioner bank when there is absolutely no evidence to mention the name of the third respondent that he received the bribe; that when there is no case in evidence to charge against the employee, the employee cannot be punished without any evidence and would pray this Court to dismiss the writ petition.

10. In consideration of the facts pleaded,having regard to the materials placed on record and upon hearing of the learned counsel appearing for both, this Court is able to assess that on serious allegations of corruption, dereliction of duty and such other lapses committed on the part of the third respondent herein, while he was serving as the then Senior Supervisor of Thalaivasal Circle as a result of which a domestic enquiry was ordered on specific charges and seeking his explanation with which not being satisfied, the domestic enquiry was ordered and an Enquiry Officer in his

finding held that many of the charges were proved and the Disciplinary authority issuing notice dated 10.9.1985 seeking his explanation as to why his services should not be terminated and since the explanation offered on the part of the third respondent dated 7.10.1095 and 14.10.1985 were not found satisfactory nor unacceptable, orders have been passed by the Disciplinary authority, the Special Officer, Salem District Co-operative Bank, Salem as per his proceeding in R.C.NO.25591/84/2 dated 18.4.1986 inflicting a very lenient punishment of stoppage of next increment for a period of two years with cumulative effect further remarking that the delinquent had committed grave offence which affected the name and image of the bank. But in considering the long years of service and the fact that he was under suspension for nearly 1 = years affording an opportunity to him to turn a new leaf in his official life,stoppage of his next increment for a period two years without cumulative effect was ordered.

11. Aggrieved,the third respondent has filed a revision petition before the revisional authority i.e., the Additional Registrar, Marketing Planning and Development) Madras, Tamil Nadu Co-operative Society and the said authority having passed a vivid order discussing every aspect of the case and lamenting for the leniency of punishment further remarking that holding the delinquent's act leniently is to the detriment of the co-operative movement and would find no case made out by the third respondent before him; that there had been a serious failure to launch a criminal prosecution against Corruption of the third respondent in order to cleanse the co-operatives would ultimately confirm the order of the Special Officer dated 18.4.1986 without stoppage of next increment therein for two years without cumulative effect, thus, dismissing the revision filed by the third respondent.

12. Again, aggrieved against this order passed by the revisional authority making use of the discretion granted by law to the first respondent, the third respondent has approached the first respondent and the first respondent also has rejected the revision on the ground of laches for his belated approach and again the third respondent filed review of the order of the first respondent, which the first respondent having entertained in exercise of its suo motu powers vested under law and for no good reasons assigned has set aside the order passed by the second respondent herein dated 18.4.1986 and it is this order passed by the first respondent dated 8.9.1998 which is challenged by the petitioner management on grounds such as (i) the impugned order is arbitrary and capricious;(ii) the impugned order is violative of provisions of law and hence illegal;(iii)the first respondent fell in grave error in as much as it invoked the suo motu power when the powers could not be exercised after it had dismissed the application filed by the third respondent on the ground of delay;(iv) the first respondent exercised power when it had already become functus officio and there was no scope for invoking the suo motu powers under Section 153 or under any other provisions of the Tamil Nadu Co-operative Act 1983;(iv) the first respondent ought to have understood that the disciplinary action initiated and the conclusion of domestic enquiry would not fall within the realm of its jurisdiction and it should not have been interfered with the order of the second respondent;(v) the discrimination sought to be made out by the first respondent is unsustainable and not in supportive of the dictum of law and on

such other grounds vehemently attacking the attitude of the first respondent in entertaining the second revision having itself decided revision rejecting the same and therefore, the petitioner on such grounds would pray to the relief sought for in the above writ petition.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, respondent Nos.1 to 3 as well, this Court sitting on the judicial review of the subject is expected to go into the decision making capacity and the manner in which the decision has been made and not the very decision and made by the statutory authority therefore, at the outset it is relevant to mention that it is the disciplinary proceeding initiated against the third respon dent by the petitionermanagement for certain malfeasance particularly alleging corruption and in the domestic enquiry conducted, the Enquiry Officer would give his finding holding that the delinquent/third respondent guilty of the delinquencies charged against him as a result of which, the disciplinary authority should have resorted to dismiss the third respondent since the charges are concerned with the corruption of the delinquent while serving as an accountant but for the reasons not known, has taken a very lenient view of the charges proved and had inflicted the punishment of only stoppage of increment for a period of two years without cumulative effect.

14. Even against this lenient punishment,the third respondent having filed a revision petition before the second respondent since the same got dismissed with pungent remarks against the corrupt practice of the third respondent, he had resorted to file yet another revision petition before the first respondent Government and even though the first respondent having once dismissed the said revision petition on account of laches, on a review application filed by the third respondent taking up the said application and in the name of suo motu exercise of its power under Section 153 of the Tamil Nadu Co-operative Societies Act, converting the review application into a revision petition, has gone into dissecting the entire case right from the beginning not only in total violation of all the legal norms but also without revealing the special interest taken in this case which has already been dismissed by the same authority.

15. The first respondent should have realised that any review application could be entertained only to rectify if any error apparent on the face of the record has been committed by the order already made by the authority concerned,such as, typographical error, error in calculation etc. But here is the case in which the first respondent Government has taken up the review petition and in exercise of its so called suo motu powers conferred under Section 153 of the Tamil Nadu Cooperative Societies Act, has travelled too much on the wrong side towards helping the third respondent who was found guilty of the corruption charges, by the disciplinary authority, and re-appreciating and re-assessing the evidence has ultimately reversed the orders of all the lower authorities and its own order of dismissal which could only be termed erroneous,unreasonable and arbitrary and in gross violation of the procedures established under law relating to such domestic proceedings.

16. The first respondent, without knowing the limitations set by law either for review or for revision, has gone too much into these areas which cannot fall within the realm of its jurisdiction and has unreasonably reversed the orders passed by the second respondent. Without knowing that the first respondent in the name of exercising its discretion conferred under Section 153 of the Tamil Nadu Co-operative Societies Act, as though it is an unlimited discretion, it would arbitrarily exercise the said power and therefore needless to mention that the re-assessment of the case decided by the disciplinary authority and re-appreciating the evidence, the revisional

authority has only exceeded its authority and the manner in which the order has been passed absolutely bereft of reasons would only mean arbitral exercise of power by misuse and abuse of the authority.

17. The first respondent should have understood that in law, there is no such power called absolute discretion conferred on any authority and if at all, there is any discretion, it is only the judicial discretion and it has to be exercised in a judicious manner sparingly, wherever it is necessary, and whenever it is required for the authority to exercise the same ie.,only for constructive purposes and not otherwise.

18. In the case in hand, the first respondent, first of all should not have taken up the representation made on the part of the third respondent, in the name of review application. If at all,any such review application has been filed as already pointed out, the authority should have only gone into see whether any error apparent on the face of the record has occurred in the order of dismissal by the first respondent regarding the revision filed by the third respondent.

19. Secondly, the authority should not have gone up to that extent as to assume suo motu powers in order to re-assess the case or reappreciate the evidence which is none of the business of the revisional authority at all. At any cost, the revisional authority cannot sit in the chair of the disciplinary authority or the appellate authority which have all been over and therefore, the exercise of power the manner in which the first respondent has assumed is only arbitrary and not in accordance with law.

20. While, the review application cannot be entertained except to see whether an error apparent on the face of the record has occurred, a revision cannot be done in exercise of revisional jurisdiction as in the very recent case held ie., reported in 2004(3)CTC 586 (Ram Brikash Singh -vs-Ambika Yadav) wherein the Hon'ble Apex Court relying on the Judgment delivered way back in D.Stephens.v.Nosibolla (1951 SCR 284: AIR 1951 SC 196 has held that revisional jurisdiction when it is invoked against an order of acquittal by a private complainant is not to be lightly exercised, it could be exercised only in exceptional cases to correct a manifest illegality or to prevent a gross miscarriage of justice and not to be ordinarily used merely for the reason that the trial Court has mis-appreciated the evidence on record.

21. In short, the exercise of power under Section 153 of the

Tamil Nadu Cooperative Societies Act by the first respondent is arbitrary and illegal and hence it has to be set aside and is set aside accordingly.

In result,
i) the above writ petition succeeds and the same is allowed;
ii) the order made in G.O.(2D) No.61, Co-operation, Food and Consumer Protection Department dated 8.9.1998 by the first respondent is quashed;
iii) the order of the second respondent dated 6.7.1990 made in RC No.219173/89 S.1 dated 6.7.1990 thereby confirming the order passed by the petitioner in its order No.R.C.NO.255591/81ep/ /2 dated 18.4.198 6 is confirmed.
iv) There will be no order as to costs.

Index:yes

Internet: yes
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To
1. The Secretary to Government
Cooperation Food and Consumer

Protection Department,
Secretariat,
Chennai-9

2. The Additional Registrar
O/o Registrar of Co-operative Societies,
Kilpauk,
Chennai-10